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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194950

DATE: November 1, 1979

MATTER OF: Coast Counties Express, Inc.

[Request for Review of GSA Deduction Action To Collect Alleged Overcharge]

DIGEST:

1. Quotations of freight rates are considered continuing offers to perform transportation services at quoted rates subject to terms and conditions contained in offers. They are the same as any other offer made by a party seeking to form a contract and their interpretation is subject to traditional rules of contract law.
2. Provisions of Section 22 quotations are construed against carrier, party preparing document, and strongly in favor of shipper.

*DLG 03233
AGC 00 017*

Coast Counties Express, Inc. (CCE) requests review of the General Services Administration's (GSA) action in collecting an alleged overcharge by deduction from monies otherwise due CCE. A deduction action constitutes a settlement within the meaning of Section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. § 66(b) (1976). Under regulations implementing Section 201(3), a deduction action constitutes a settlement action reviewable by the Comptroller General. 4 C.F.R. §§ 53.1(b) (1) and 53.2 (1978). CCE's letter substantially complies with the criteria for requests for review of such an action. 4 C.F.R. § 53.3 (1978).

GSA's action was taken on a shipment described on Government bill of lading (GBL) No. K-2529044 as "2 CO (conex containers) ROCKET AMMUNITION WITH EXPLOSIVE PROJECTILES (NMFC 64300) CLASS 'A' EXPLOSIVES," weighing 7,300 pounds. The GBL noted that a 20-foot van was ordered and furnished ("TRK # 23 LIC #Y52250 CA TRLR #N/A"), that seals were applied, and that the volume of the shipment was 730 cubic feet. CCE Tender No. 22-B (Tender 22-B) was cited on the GBL. The shipment was transported by CCE on December 16, 1976, from Sycamore Annex, San Diego, California, to Norton Air Force Base, California.

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CCE assessed transportation charges of \$590.80 on the shipment. Upon a post payment audit, GSA determined that there was an overcharge of \$134.02 by CCE. —49 U.S.C. § 66(a) (1976). After deduction by setoff for the alleged overcharge, CCE requested review.

GSA says that the rates in Tender 22-B apply to the shipment. The tender was issued by CCE under section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. § 22 (1976), made applicable to motor carriers by Section 217(b) of the Act, 49 U.S.C. § 317(b) (1976). Section 4 of this tender contains the rates to be applied. The rates are subject to several notes including Note 1 which reads:

"Rates covering shipments of 1,000 lbs. or less are restricted to maximum dimensions of 96 inches long 48 inches wide and 42 inches high. Those from 1,001 lbs., to and including 10,000 lbs., must be capable of being loaded in a 20 ft. closed van truck."

Section 7 of the tender states ". . . where this tender is silent in any given instance, the provisions of Western Motor Tariff Bureau U.S. Government Quotation No. 1 (Quotation #1) will apply."

CCE claims that the rates in Quotation #1 apply to this shipment; its justification is based on its contention that these class "A" explosives had to be transported on open flatbed equipment, that the rates in Tender 22-B do not apply to open equipment and that therefore the tender is silent and the rates in Quotation #1 apply. To support this contention CCE states that the ordering installation always specifies a flatbed truck and always cites Volume I of Naval Sea Systems Command Ordnance Publication (NAVSEA OP) 2165, paragraph 4-8, "Loading and Unloading of Long Ordnance Items in Motor Vehicles and Railcars", which states in part:

"The loading of long ordnance items in closed truck vans or box cars is authorized only when flatbed equipment is not available and shipment must be made because of military necessity."

GSA's basis for the overcharge is that Note 1, section 4, of Tender 22-B establishes a restriction on di-

mensions only (not on type of equipment used) and that therefore the rates established in Tender 22-B apply.

Quotations of freight rates, such as Tender 22-B, are considered to be continuing offers to perform transportation services at the quoted rates subject to the terms and conditions contained in the offers. C & H Transportation Co. v. United States, 436 F.2d 480 (Ct. Cl. 1971). They are the same as any other offer made by a party seeking to form a contract and their interpretation is subject to traditional rules of contract law. Union Pacific R.R. v. United States, 434 F.2d 1341, 1345 (Ct. Cl. 1970).

The language in Note 1 of Section 4 of the tender, ". . . must be capable of being loaded in a 20 ft. closed van truck", is clear. GSA's interpretation is that this establishes dimensions for the shipment but does not preclude using open flatbed equipment. CCE contends that the tender rates apply only to shipments actually made in closed van trucks. We agree with GSA.

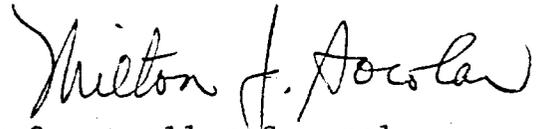
In accordance with traditional rules of contract law, a Section 22 quotation or tender is construed against the carrier, the party preparing the document, and strongly in favor of the shipper. 56 Comp. Gen. 529, 531 (1977); 55 id. 301, 304 (1975); 39 id. 352, 355 (1959). Thus, we agree with GSA that the rates in Tender 22-B apply here whether open or closed equipment is used.

Even though we agree with GSA's interpretation of Tender 22-B, we note that CCE has not met its burden of proving that the shipment actually moved on open flatbed equipment. The GBL shows that a 20-foot van was ordered and furnished, that a truck number and license plate number were noted but a trailer number was not, and that seals were applied to the vehicle used. Thus, the GBL overwhelmingly raises the presumption that a closed vehicle was used to transport the explosives.

To rebut the presumption CCE states that based on the Navy regulations, cited above, open equipment was ordered and furnished. While GSA reports that the route order shown on the GBL authorized the use of 20- or 40-foot flatbed trailers, we do not believe that this is

enough to overcome the substantial evidence in the record supporting the use of a closed truck.

Based on the present record, GSA's settlement action on the shipment moving under GBL No. K-2529044 is correct and it is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General
of the United States